

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advertising Council Request for	)	DA 01-1169
Declaratory Ruling or Waiver	)	
Concerning Sponsorship Identification Rules	)	

**ORDER**

**Adopted: September 27, 2002****Released: November 7, 2002**

By the Commission:

**INTRODUCTION**

1. This *Order* responds to a request by the Advertising Council, Inc. (“Ad Council”)<sup>1</sup> in which it asks the Commission to issue a declaratory ruling that neither the Communications Act (“Act”) nor the Commission’s rules requires that the White House Office of National Drug Control Policy (“ONDCP”) be identified as the sponsor of certain public service announcements (“PSAs”). In the alternative, it requests that the Commission waive the requirement that the ONDCP be identified as sponsor of the PSAs. For reasons cited herein, we deny the Ad Council’s request for a declaratory ruling and its request for a waiver.

**BACKGROUND**

2. In 1987, the Partnership for a Drug Free America (“PDFA”), a non-profit organization dedicated to reducing drug use in the United States, was created. It developed and administered a nationwide *pro bono* anti-drug media campaign. The campaign included public service announcements aired for free by the networks on stations around the country. Because the amount of airtime donated by networks to broadcast anti-drug PSAs apparently began to decline throughout the 1990s, PDFA and ONDCP approached Congress to obtain public funding for a paid national anti-drug media campaign. In 1997, in the Executive Office Appropriations Act of 1998, Congress appropriated \$195 million dollars to support the first year of a possible five-year national media campaign, to reduce and prevent drug abuse among young Americans. No funds would be made available to the campaign until the Director of the ONDCP submitted for approval to two Congressional Committees a strategy which included, among other things, guidelines to ensure and certify that funds will supplement and not supplant current anti-drug community-based coalitions and current *pro bono* public service time donated by broadcasting networks.

3. In 1998, Congress enacted the Drug-Free Media Campaign Act, 21 U.S.C. Section 1801 et seq. (“Media Campaign Act”), which authorized funding to ONDCP to carry out a national media campaign to reduce and prevent drug abuse among young people in the United States for fiscal years 1999 through 2002. In the Media Campaign Act, Congress required that, for each dollar spent for the

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<sup>1</sup> The Ad Council is a private, not-for-profit organization whose major activity includes the production, distribution, promotion and evaluation of public service campaigns. As such, it annually conducts approximately forty public service campaigns on behalf of a variety of national non-profit organizations and government agencies.

purchase of advertising time by the Office of National Drug Control Policy (“ONDCP”) from a network or licensee, the network or licensee must make available to ONDCP an equivalent amount of time or space through either on-air or other in-kind contributions. Specifically, Section 1802(c) of the Media Campaign Act states that “[a]mounts made available under Section 1804 of this title should be matched by an equal amount of non-Federal funds for the national media campaign, or be matched with in-kind contributions to the campaign of the same value.” Section 1802(b) states, in pertinent part, that none of the funds appropriated for the national media campaign may be used “to supplant current anti-drug community based coalitions” or “to supplant current *pro bono* public service time donated by national and local broadcasting networks.”

4. ONDCP, the Ad Council and the Partnership for a Drug-Free America (“PDFA”) jointly developed guidelines to implement the media match requirement.<sup>2</sup> The Guidelines state that “[t]he intention of Congress was to ensure that the donated Public Service Model be preserved and not supplanted by the Media Match compliance.”<sup>3</sup> The Guidelines list various methods for networks or licensees to obtain matching credit, including the broadcasting of public service announcements. The Guidelines state that at least 51% of the matching contribution by networks or licensees must be in the form of public service announcement advertising time and space (“match-PSAs”). The Guidelines also state that a National Media Match Task Force -- consisting of the Ad Council, ONDCP and four other organizations,<sup>4</sup> -- meets on a quarterly basis to review completed PSAs submitted by nonprofit organizations and government agencies for consideration as match-PSAs. According to the Guidelines, the PSAs must support the ONDCP’s goals and include one or more of nine content objectives, including educating and supporting the development of good parenting practices, and fostering high expectations and self-esteem for youth. The producing organizations’ logo must be on the advertising and the logo and producing organizations must be clearly identifiable. The Task Force decides which PSAs qualify for the matching program and submits a reel of the approved spots to the networks. The networks then decide which spots on the reel are to be aired, how often and to what purpose. According to the Ad Council, match-PSAs have been produced by approximately 59 not-for-profit organizations or governmental agencies.

5. The Ad Council asserts that none of the entities producing the match-PSAs are controlled by, affiliated with, or funded by ONDCP. It states that “[t]he PSAs are produced independently by each not-for-profit organization or agency, are paid for entirely by such organization or agency and, at all times, are under the exclusive and full editorial control of such organization or entity.”<sup>5</sup> The Ad Council maintains that the PSAs that air as part of the matching program may also be aired by stations independent of the matching program.

6. On December 22, 2000, the Chief, Enforcement Bureau, issued a letter to Thomas W. Dean terminating the investigation into a complaint filed by the National Organization for the Reform of Marijuana Laws Foundation (“NORML”) concerning several networks’ participation in the matching

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<sup>2</sup> ONDCP National Youth Anti-Drug Media Campaign, Pro Bono Match Program and Guidelines, October 2001 (“Guidelines”).

<sup>3</sup> Guidelines at Section C1.

<sup>4</sup> The other organizations include Partnership for a Drug-Free America, the U.S. Department of Health and Human Services, the Department of Justice, and the Department of Education.

<sup>5</sup> Ad Council Request at 4.

program (“Dean”).<sup>6</sup> Specifically, NORML alleged that the networks had failed, in violation of our sponsorship identification rules, to identify ONDCP as the sponsor of certain programs containing anti-alcohol or drug abuse themes that were given matching credit after the programs initially aired. In that decision, the Enforcement Bureau stated that “[t]he Networks were obligated to donate a matching amount of media time for every advertising spot purchased by ONDCP. Thus, we find that any credit toward that obligation that the Networks received for the broadcast of programming with anti-drug and anti-alcohol themes constitutes consideration.”<sup>7</sup> As none of the networks knew if they would receive matching credits for a program until after it was first broadcast, the Enforcement Bureau concluded that an ONDCP tag was not required for those broadcasts. However, it determined that ONDCP should be identified as the sponsor in any airings of a program subsequent to it being approved for matching credit.

7. On March 27, 2001, the Ad Council filed the subject “Request for an Expedited Declaratory Ruling or Waiver of Section 317 of the Communications Act.” In its filing, the Ad Council states that, although the *Dean* decision involved match programming that did not consist of public service announcements, the decision had caused several broadcast networks to question whether Section 317 of the Communications Act (“Act”) also requires that the match-PSAs identify ONDCP as a sponsor in addition to identifying the particular producing entity. The Ad Council requests that the Commission issue a declaratory ruling stating that neither Section 317 of the Act nor the corresponding Commission Rule, 47 C.F.R. § 73.1212, requires that ONDCP be identified as the sponsor of the match-PSAs. The Ad Council states that broadcasters generally do not receive consideration for airing PSAs and therefore “PSAs have traditionally been deemed exempt from the categories of programming that require sponsorship identification.”<sup>8</sup> According to the Ad Council, the subject PSAs are aired by a station as part of its statutorily-required matching contribution for broadcast time purchased by ONDCP in connection with the Media Campaign Act.<sup>9</sup> The Ad Council argues that Section 317 does not apply to these matching PSAs because consideration is not paid to the broadcasters for airing them.

8. Even if Section 317 applies, the Ad Council argues that having a tagline identifying the organizations or agencies that produce, edit and otherwise control the PSAs as the sponsors of the PSAs would comply. It points out that, in *Trumper Communications*, the Mass Media Bureau noted that sponsorship identification may not be required of funding entities “where there is credible evidence that such entities do not have editorial control of the announcements.”<sup>10</sup> The Ad Council maintains that the ONDCP should be viewed as an agent “who facilitates and coordinates the match-PSA program on behalf of a myriad group of organizations who produce the spots.”<sup>11</sup> As an agent, the Ad Council argues that ONDCP is not required to be named as sponsor of the match-PSAs pursuant to Section 73.1212(e) of the Commission’s Rules.

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<sup>6</sup> Letter from David H. Solomon, Chief, Enforcement Bureau, Federal Communications Commission, to Thomas W. Dean, Esq., Litigation Director, NORML Foundation, 16 FCC Rcd 1421 (2000).

<sup>7</sup> 16 FCC Rcd at 1424.

<sup>8</sup> Ad Council Request at 7.

<sup>9</sup> Drug-Free National Media Campaign Act of 1998, 21 U.S.C. § 1801 *et seq.*

<sup>10</sup> 11 FCC Rcd 20415, 20418 (MMB 1996).

<sup>11</sup> Ad Council Request at 7.

9. The Ad Council asserts that the decision in *Dean* does not apply to the match-PSA program. Unlike the subject programming in *Dean*, the Ad Council contends that the match-PSAs are noncommercial and, as explained more fully in the Ad Council's waiver argument below, "the ONDCP program was constructed in a manner so as to preserve, not supplant, the PSAs in existence prior to Congress' enactment of the paid National Anti-Drug Campaign."<sup>12</sup>

10. As an alternative to a declaratory ruling, the Ad Council requests that, in the public interest, the FCC waive the requirement that the ONDCP be identified as sponsor of the PSAs pursuant to Section 317(d). The Ad Council argues that, by including a waiver provision in Section 317 itself and not relying on the general waiver provision set forth in the Commission's Rules,<sup>13</sup> Congress strongly suggests that rigid application of the sponsorship identification requirements may be inappropriate under certain circumstances and such circumstances exist in this case. It contends that without a waiver "Section 1802(b) of the Media Campaign Act and Section 317 of the Act will work at cross purposes."<sup>14</sup> The Ad Council maintains that it is clear from the language of Section 1802(b) that it was Congress' intent that the pre-existing *pro bono* program be preserved. According to the Ad Council, Congress adopted the matching program because it recognized "that a paid media campaign potentially could compete with and ultimately decrease donated time that also aims at reducing drug use" and it wanted to assure that the funds used in the Media Campaign Act did not supplant this donated time.<sup>15</sup> The Ad Council argues that requiring the ONDCP tag on match-PSAs will compromise the program and confuse the public.

11. Specifically, the Ad Council argues that such a requirement would cause undue economic hardship by imposing additional production costs on the organizations producing the PSAs due to the need to edit existing PSAs to include the ONDCP tag and because union-affiliated labor purportedly could no longer charge reduced wages for donated public service announcements production work. According to the Ad Council, "[t]hese additional costs would substantially burden non-profit organizations and in all likelihood diminish the interest of those organizations in continuing to produce spots that would qualify under the match."<sup>16</sup> It also contends that requiring the ONDCP tag on the match-PSAs would create public confusion: by giving "the impression that ONDCP controls and edits the match-PSAs, pays for them and is somehow associated with the message being communicated – an impression that could compromise such organization's independence and potentially could undermine its ability to raise funds from its members;" and by having the ONDCP tag on a PSA when aired as part of the matching program and no ONDCP tag on the same PSA when aired independent of the program.<sup>17</sup>

12. The Ad Council further asserts that grant of the waiver would promote the goals of Section 317 by accurately telling listeners who is persuading them, and conform to Commission precedent. In *National Broadcasting Company, Inc. and Young & Rubican International, Inc.*,<sup>18</sup> the Ad

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<sup>12</sup> Ad Council Request at 9.

<sup>13</sup> 47 C.F.R. § 1.3.

<sup>14</sup> Ad Council Request at 10-11.

<sup>15</sup> Ad Council Request at 3.

<sup>16</sup> Ad Council Request at 11.

<sup>17</sup> Ad Council Request at 11.

<sup>18</sup> 34 FCC 2d 600 (1972) ("*Young & Rubican*").

Council states the Commission granted a request to waive the requirements of Section 317 with respect to certain announcements which the Gulf Oil Corporation (“Gulf”) wished to air on the NBC television network. The Ad Council argues that the public interest justifications set forth in the *Young and Rubican* case also apply to the subject case and, therefore, its waiver request should be granted.

13. In a Public Notice, 16 FCC Rcd 9514 (2001), we asked the public to submit comments regarding the Ad Council’s request. The attached Appendix lists the commenters to this proceeding.

### DISCUSSION

14. Section 317(a)(1) of the Act provides, in pertinent part, that:

All matter broadcast by any radio station for which money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall at the time the same is so broadcast, be announced as paid for or furnished by, as the case may be, by such person.

47 U.S.C. § 317(a)(1). Section 317(d) of the Act states that the requirement of an announcement may be waived if the Commission “determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.” 47 U.S.C. § 317(d). In furtherance of Section 317, Section 73.1212(a) of the Commission’s Rules states:

When a broadcast station transmits any matter for which money, service or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast shall announce:

- (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and
- (2) By whom or on whose behalf such consideration was supplied ...

47 C.F.R. § 73.1212(a). In addition, Section 73.1212(e) states, in part, that “where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, . . . could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent.”<sup>19</sup>

15. Broadcasters were first required to comply with over-the-air sponsorship identification requirements by the Radio Act of 1927<sup>20</sup> and the basic rationale for those requirements, that the public be informed of who is attempting to persuade them, has not changed. As the Commission stated in *United States Postal Service*, such a requirement is “based on the principle that the public has the right to know whether the broadcast material has been paid for and by whom.”<sup>21</sup> Thus, the purpose of the sponsorship identification requirements mandates that “the audience be clearly informed that it is hearing and viewing

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<sup>19</sup> 47 C.F. R. § 73.1212(e).

<sup>20</sup> 44 Stat. 1162, 1170.

<sup>21</sup> 41 RR2d 877, 878 (1977), citing *Sponsorship Identification*, 40 FCC 2 (1950).

matter which has been paid for when such is the case, and that the person paying for the broadcast of the matter be clearly identified.”<sup>22</sup> The language of the sponsorship identification “statute is very broad, requiring sponsorship identification if any type of valuable consideration is directly or indirectly paid or promised, charged or accepted” and “[t]he Commission has consistently upheld these strict identification requirements.”<sup>23</sup>

#### Request for Declaratory Ruling

16. We conclude that, based on the record before us and, as urged by the Media Access Project (“MAP”) <sup>24</sup> and NORML in their comments, <sup>25</sup> ONDCP is a sponsor of the match-PSAs pursuant to the Communications Act and our rules and, absent a waiver, should be identified as such within the match-PSAs. When ONDCP purchases advertising time from a network or licensee, the licensee or network must, as part of the contractual arrangement with ONDCP, make available an equivalent amount of time or space to ONDCP through either on-air or other in-kind contributions, which include match-PSAs. The *Dean* decision correctly found that the credit the Networks receive toward satisfaction of their statutorily-mandated matching obligation constituted “consideration” for broadcasting programming with ONDCP-approved anti-drug and anti-alcohol themes. *Dean* appropriately recognized that the matching obligation is an integral part of the contractual arrangement between ONDCP and the networks. Indeed, unless the networks agree to comply with the matching obligation on a dollar for dollar basis, no contract can be made. The Guidelines are clear in describing the nature of the transaction: “[t]he paid and *pro bono* match elements are to be considered as a total package with both elements necessary for successful compliance with the overall ONDCP guidelines.”<sup>26</sup>

17. Moreover, describing the advertisements for which networks receive credit as “public service announcements” does not exempt them from our sponsorship identification requirements. It is not the nature of the message conveyed in broadcast material that determines whether an identification is required but rather whether or not a station receives valuable consideration for broadcasting it. The Commission addressed this precise issue when it stated in a 1991 *Public Notice* that:

Generally, when no payment or other valuable consideration is paid or promised for the broadcast or cablecast, no “sponsorship identification” is necessary, since

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<sup>22</sup> *Application of Sponsorship Identification Rules to political broadcast, teaser announcements, governmental entities and other organizations*, 41 RR2d 761, 762 (1977).

<sup>23</sup> 16 FCC Rcd at 1423.

<sup>24</sup> MAP filed its comments on June 13, 2001, one day after the comment deadline of June 12, 2001. It filed a motion requesting that the Commission accept its late-filed comments. We herein grant that motion. In its comments, MAP also requests that the record of the *Dean* proceeding and the transcripts of five Congressional hearings pertaining to ONDCP’s implementation of the Media Campaign Act be entered into the record of this proceeding. MAP’s request is unnecessary because the subject records are readily available public documents which will be considered to the extent they are relevant to this case.

<sup>25</sup> We note that the following organizations participating in the match program express support for the Ad Council’s request for declaratory ruling in their comments or reply comments to this proceeding: the Library of Congress, KidsPeace National Centers, the WB, Fox Broadcasting Company (“Fox”), and the Walt Disney Company and the ABC Television Network (“Disney/ABC”).

<sup>26</sup> Guidelines at Section B.

by definition there is no sponsor. A “public service announcement” (one for which no charge is made and which is regarded as serving community interests, as by promoting programs, activities, or services of governmental or other nonprofit organizations) exemplifies the type of material that would not require sponsor identification because it is broadcast or cablecast for free. When payment is made, however, the same announcement, by failing to include the fact that the party paid for the announcement, violates Section 317 of the Communications Act and related Commission Rules.<sup>27</sup>

Thus, the Commission explicitly emphasized that public service announcements are subject to the sponsorship identification requirement when aired in return for consideration, as we have found in this matter. Here, the consideration received for airing the ONDCP-approved match-PSAs is that the network or licensee is given credit towards satisfaction of its contractual obligation to provide monetary or in-kind contributions to the campaign and thereby to secure its entitlement to ONDCP advertising funds.

18. Furthermore, we find that ONDCP is not a passive conduit for the advertisements submitted by those seeking match-PSA consideration, as suggested by the Ad Council. Rather, ONDCP is the most active participant in the entire match-PSA process, including exercising control over the content of the match-PSAs, an element previously recognized by the Commission as an indicia of sponsorship.<sup>28</sup> As such, it is apparent that ONDCP is the principal in these transactions and is not merely an agent acting on behalf of the various organizations whose material has been approved for match-PSA broadcasts. Under Section 73.1212(e) of our rules, this finding requires ONDCP identification. Specifically, together with two other entities, ONDCP created the Guidelines that are used to judge the eligibility of a PSA to participate in the matching program and it is a voting member of the Task Force which decides which material qualifies as match-PSAs. The Guidelines demonstrate ONDCP’s influence over critical aspects of the matching program: all of the PSAs must support the ONDCP’s goals and one of the content guidelines for the match-PSAs is “support other drug-related messages and campaigns as determined by ONDCP.”<sup>29</sup> In addition, ONDCP has the authority to grant or deny exceptions to various policies set forth in the Guidelines, including: permitting PSAs not on the approved reel to receive matching credit; and allowing match-PSAs to air outside the time frame given for PSAs directly purchased by ONDCP. Moreover, we note that entities participating in the match program are required to submit quarterly reports to ONDCP concerning the impact that the program has had on the entity (*e.g.*, increase in volume of calls). Considered together, these elements of ONDCP control make it apparent that, consistent with the statute and our rules, it should be identified as a sponsor of the match-PSAs.

19. Based on the foregoing, we conclude that, absent a waiver, the Act and our rules would require that ONDCP be identified as a sponsor of the match-PSAs. Accordingly, we deny the Ad Council’s subject request for a declaratory ruling.

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<sup>27</sup> *Commission Reminds Broadcast Licensees and Cable Operators of Sponsorship Identification Requirements Applicable to Paid-For “Public Service” Messages*, 6 FCC Rcd 5861, 5861 (1991) (footnotes and cites omitted).

<sup>28</sup> *Trumper Communications*.

<sup>29</sup> Guidelines at Section B and Exhibit A.

Request for Waiver

20. Upon review of the record in this proceeding and, in agreement with comments filed by MAP and NORML, we conclude that neither the Ad Council nor any of the commenting parties supporting its waiver request, have provided sufficient justification to grant a waiver of the statutory sponsorship identification requirement. In enacting Section 317 of the Act, Congress made clear its intention to design a regulatory scheme which attempts to ensure that the public knows the identity of those persons or entities attempting to persuade it. Within this framework, the Commission emphasized in its *Department of Defense* ruling, in which it refused to grant a waiver to a governmental sponsor, that “the public is particularly entitled to know when the government is using tax dollars to persuade it.”<sup>30</sup> Here, the match-PSAs are provided as a means of receiving congressionally appropriated ONDCP funds. We therefore believe that it is more appropriate for the match-PSAs to include an ONDCP identification than to waive the requirement and leave the public unaware of the government’s role in the broadcasts. The government’s involvement in this case also distinguishes it from *Young & Rubican*, where the Commission waived the sponsorship identification requirement as to a private corporation. Moreover, in *Young & Rubican*, unlike here, there was no indication that the private company, Gulf Oil Corporation, had any control over the content of the announcements.

21. We are also unpersuaded by the Ad Council’s representation that requiring an ONDCP tag would thwart congressional intent in enacting the matching requirement. The Ad Council argues that the matching element of the Media Campaign Act was an attempt by Congress to ensure that existing *pro bono* public service time donated by the networks not be supplanted. The Ad Council concludes, therefore, that the matching contribution will help to ensure that broadcast time remains available to the existing *pro bono* recipients. In fact, however, neither the Media Campaign Act nor the legislative history suggests that the matching contribution must be utilized by organizations other than ONDCP. Moreover, a statement in the Guidelines—created by ONDCP, the Ad Council and PDFA—does not support the Ad Council’s argument. Specifically, the Guidelines state that “[m]edia outlets should not reduce their donated media support of existing Ad Council, PDFA or other PSAs to generate inventory for the Media Match.”<sup>31</sup> Thus, it appears from the Guidelines that the ONDCP itself considers the matching contribution to be independent of existing *pro bono* donations. We are also unpersuaded by the Ad Council’s argument that the success of the matching program will be jeopardized because 24 of the 59 organizations that have participated in the match program will cease to participate if ONDCP is identified.<sup>32</sup> We do not believe that the unwillingness of some organizations to participate if required to disclose ONDCP as a sponsor would jeopardize the success of the program if a sufficient number of willing

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<sup>30</sup> 41 RR2d 881, 883 (1977).

<sup>31</sup> Guidelines at Section C1.

<sup>32</sup> Ad Council Comments at 1. The 24 organizations includes: 100 Black Men of America, America’s Promise – The Alliance for Youth, American Psychological Association, American Symphony Orchestra League, The Children’s Aid Society, Country Music Association, El Valor, Girls and Boys Town, Girl Scouts of the USA, Harvard Center of Health Communication, Healthy Competition Foundation, Hepatitis Foundation, Inc., MADD, Mentoring USA, National Crime Prevention Council, National Fatherhood Initiative, National 4H Council, National Mental Health Awareness Campaign, National Organization on Fetal Alcohol Syndrome, Prevent Child Abuse America, RADD, Save the Children, U.S. Army (Operation Graduation Campaign) and U.S. Department of Transportation. Originally, the Benton Foundation was included in the list but, in its reply comments, the Ad Council indicated that this organization chooses to no longer participate in this proceeding. We note that two additional organizations, the Library of Congress and KidsPeace National Centers express concerns about the addition of the ONDCP tag to the match-PSAs in their comments and reply comments, respectively.



participants remain. Moreover, any difficulties resulting from the loss of some participants are outweighed by the importance of fulfilling the policy underlying Section 317 – public disclosure of sponsorship identification.

22. As to the argument that adding a tag would cause an increase in production costs, we continue to agree with the Commission's finding in *United States Postal Service* that the "[c]ost to the advertiser or reduced effectiveness of the advertising are not factors that previously have been considered as bearing on whether such disclosure should be required. In fact, almost any advertiser could seek exemption from the statutory sponsorship identification requirements on similar grounds."<sup>33</sup> In addition, we do not see how it would confuse the public to view the same PSA, sometimes with the ONDCP tagline and sometimes without. Presumably, the public will understand that the PSAs with the ONDCP tag were sponsored by ONDCP and the PSAs without the tag were not. Furthermore, we believe that the public's right to be informed when the ONDCP is involved outweighs any possible confusion that may result. Finally, the contentions concerning the adverse impact of imposing the sponsorship identification requirement in this case on funding of the match-PSA organizations appear speculative and do not warrant the wholesale exemption from the disclosure requirement requested by the Ad Council.

### ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that the Ad Council's request for declaratory ruling and request for waiver ARE DENIED.<sup>34</sup>

### FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>33</sup> 41 RR2d at 878.

<sup>34</sup> In its reply comments, the WB requests that we find that the ONDCP tag is not required, or that the requirement to have such a tag should be waived, for PSAs that qualify for the matching program and that a network produces in-house, at its own cost and within its own editorial discretion. These network-produced PSAs are not the subject of the Ad Council's petition, which only concerns match-PSAs produced by non-profit organizations or government agencies, and the public has not had an opportunity to comment on this request. Therefore, the request is outside the scope of this proceeding and we decline to rule on it at this time. The WB may resubmit its request, independent of this proceeding, and we will consider it at that time. We note, however, that the credit WB receives from ONDCP for the airing of the WB-produced PSAs would appear, consistent with the *Dean* decision and our findings herein, to be valuable consideration and require an ONDCP tag.

**APPENDIX****LIST OF COMMENTING PARTIES**Comments

Advertising Council, Inc.

Library of Congress

Media Access Project

National Organization for the Reform of Marijuana Laws Foundation

Reply Comments

Advertising Council, Inc.

KidsPeace National Centers

Media Access Project

WB Television Network

Ex Parte Presentation

Fox Broadcasting Company

Media Access Project

Walt Disney Company and ABC Television Network